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In The

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICUS CURIAE* INDEPENDENT BAPTIST CHURCHES OF AMERICA IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Independent Baptist Churches of America[2] believe that the First and Fourteenth Amendments to the United States Constitution guarantee them both free speech and the free exercise of religion, including the right to anonymous solicitation, of participation in and attendance in local churches and religions.

The Independent Baptist Churches of America believe that anonymous solicitation and canvassing of communities to solicit membership in churches and Sunday schools is both constitutionally protected and biblically prescribed. Specifically, the Independent Baptist Churches of America rely upon the First and Fourteenth Amendments to the United States Constitution, and upon the biblical imperatives stemming from Jesus Christ's command in Matthew 28:19, 20, and the biblical prescription for door-to-door, two-by-two canvassing as set forth in Luke 10:1:4.

This *amicus curiae* believes that to require permits for religious solicitation would be violative of its constitutional rights, and would permit local officials who may be

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that this Brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this Brief was made by any person or entity other than the *amicus curiae* or its counsel.

[2] An unincorporated group of Independent Baptist Churches designated as such merely for the convenience of the reader, and otherwise unaffiliated with a denominational church, and identified, separately and collectively, on Exhibit "A", attached hereto.

antagonistic toward one religious group, or favorable to another, to control the activities of those advocates of anonymous solicitation.

The Independent Baptist Churches of America have no stake in either of the parties to this Appeal or in the outcome of the Appeal, other than their interest in seeking correct and consistent interpretation of their constitutional rights to practice their religion anonymously and to follow the biblical imperatives.

CONSENT OF FILING OF *AMICUS CURIAE* BRIEF

In accordance with Supreme Court Rule 37.4(a), the Independent Baptist Churches of America have obtained written consent to the filing of this *amicus curiae* brief from counsel of record for both parties. The written consents of the parties are being filed with the Clerk of Court and accompany this Brief.

SUMMARY OF ARGUMENT

The Court of Appeals for the Sixth Circuit in *Watchtower Bible and Tract Society of New York, Inc.; Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc. v. Village of Stratton, Ohio; John M. Abdalla, Mayor of the Village of Stratton, Ohio, in his official capacity*, 240 F.3d 553 (6th Cir. 2001), *cert. granted*, No. 00-1737 (2001), has determined that an Ordinance of the Village of Stratton, Ohio, requiring registration and licensure of Jehovah's Witnesses does not violate the First Amendment's free speech guarantee

as applied to religious groups. The Court of Appeals for the Sixth Circuit has further found that the Ordinance in question did not violate the free exercise clause, as the Ordinance was content-neutral and a law of general applicability.

The Independent Baptist Churches of America support a reversal by the Supreme Court of the United States of the finding that the Ordinance did not violate the First Amendment's free speech guarantees as applied to religious groups, including, but not limited to, the Jehovah's Witnesses, as well as to other religious groups performing solicitation and canvassing of communities for religious purposes.

The principle advanced by the Independent Baptist Churches of America is that the Ordinance in question and those of similar genre will by necessity interfere with the exercise of free speech and free exercise rights protected by the First Amendment to the Constitution of the United States.

The Independent Baptist Churches of America maintain that Jehovah's Witnesses, as well as Baptists, and other religious groups in America, are entitled to the protection set forth in the First and Fourteenth Amendments to the Constitution and that the Ordinance adopted by the Village of Stratton, Ohio, improperly constrains the anonymous exercise of religion in America, as well as impermissibly affects the exercise of anonymous free speech, and religious solicitation as set forth herein.

ARGUMENT

I. Does a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse?

The Independent Baptist Churches of America stand squarely with the Jehovah's Witnesses with respect to the position that the Ordinance adopted by the Village of Stratton, Ohio, impermissibly and unconstitutionally requires the obtaining of a permit prior to door-to-door solicitation exercised by religious groups in conformity with the First Amendment of the United States Constitution.

An ordinance specifically requiring similar door-to-door solicitors for religious, charitable, or philanthropic causes to first obtain a permit was long ago recognized by this Court to be violative of the protection of the First Amendment's free speech and free exercise clauses. *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1943).

In *Cantwell*, Mr. Justice Roberts delivering the opinion of the Court clearly stated the fundamental and essential concepts with respect to a similar statute:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment . . . The constitutional

> inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts, – freedom to believe and freedom to act."

In *Cantwell*, the Court continued in its analysis of the applicability of the constitutional provisions clearly establishing the right of members of a religious body to anonymously solicit an interest in the solicitor's religious faith or political beliefs. This Court having long ago established these principles, should now clearly reaffirm the rights of the appellants to act in similar fashion.

The constitutional validity of the Village of Stratton's Ordinance hinges on the question of whether any religious organization should be required to obtain a permit to engage in door-to-door religious communications. The mere fact that permits are free and that religious organizations need only register prior to engaging in the door-to-door activities does not, by any means, suffice to pass constitutional muster.

As this Court stated in *Cantwell*, such arguments which imply that one can engage in protected speech after obtaining the free permit simply do not render the ordinance constitutionally sound. As Circuit Judge Gilman stated in his concurring and dissenting opinion in

the Sixth Circuit's decision in this case (240 F.3d 553 (2001)):

> "The majority emphasizes that 'the ordinance does not foreclose the option of going door-to-door; one only need register first' (Majority Opinion at 20-21). Such an argument implies that because a person can engage in speech once he or she has obtained a permit, all permit requirements are constitutional. This is clearly *not* the law." (See *Cantwell*, 310 U.S. at 303-07).

The requirement of obtaining a permit to canvass set forth in the Ordinance violates the First Amendment by burdening substantially more speech than is necessary to further the Village of Stratton's legitimate interests.

There already exist less intrusive means to protect the residents of the Village of Stratton against commercial fraud than the permit requirements of the Ordinance in question.

The Village of Stratton could obviously enforce existing laws to protect its citizens from fraudulent misrepresentation that may result from door-to-door solicitation. Existing laws include the Ohio Charitable Solicitation Act, the Consumer Sales Protection Act and the Home Sales Solicitation Act. (Ohio Rev. Code). As well, municipal officials can rely upon the right of individual property owners to enforce "no trespassing" mandates which are the right of any individual property owner. (*Village of Schaumburg*, 444 U.S. 620, 63 L.Ed.2d 73 (1980)).

Addressing the issue of the "means chosen", Mr. Justice Kennedy previously stated:

> "To be sure, this standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward v. Rock Against Racism*, 491 U.S. 781, 105 L.Ed.2d 661, 109 S.Ct. 2746 (1989).

The Ordinance was allegedly enacted to eliminate the potential for fraud and unwanted annoyance in the Village of Stratton. However, the Village of Stratton, by and through the testimony of Mayor Abdalla, has no burglaries, no crime, violent or otherwise, related to the door-to-door activities of canvassers. (See John M. Abdalla at TR 115, 116).

What the Village of Stratton does have is an Ordinance subjecting organizations like the Jehovah's Witnesses to a permitting process that substantially restricts their freedom of speech for their noncommercial evangelizing. The Ordinance not only restricts the Jehovah's Witnesses endeavor to seek converts, it also restricts other individuals or organizations wishing to engage in similar activities. This Ordinance burdens substantially more speech than is necessary to promote the legitimate Village objective of fraud protection, as stated by Circuit Judge Gilman in his concurring and dissenting opinion. See *Cleveland Area Board of Realtors v. City of Euclid*, 88 F.3d 382, 386-90 (6th Cir. 1996).

The requirement of obtaining a permit to engage in door-to-door advocacy of a political or religious cause, as in this case, is beyond the power of any municipality like

the Village of Stratton. The Ordinance is beyond the power of the Village of Stratton in that it is a violation of the Free Speech and Press Clauses as well as the Religion Clauses of the First Amendment.

One need only examine the Jehovah's Witnesses's canvassing activities to understand why the Ordinance is so repugnant to the Constitution. The Jehovah's Witnesses have adopted a form of grassroots approach to the advocacy of their cause including the dissemination of their own beliefs regarding a true religion. They offer Bible-based literature free of charge door-to-door, with their activities funded by voluntary donations. They do not solicit donations from door-to-door. Again, as stated in Circuit Judge Gilman's Concurring and Dissenting Opinion:

> "The Supreme Court, however, has stressed the unique role door-to-door solicitation as a means of communication, stating that 'as every person acquainted with political life knows, door-to-door campaigning is on of the most accepted techniques of seeking political support. . . . Door to door distribution of circulars is essential to the poorly financed causes of little people.' " *Martin v. City of Struthers*, 319 U.S. 141, 146 (1943).

Mr. Justice Thomas provides an excellent analysis from an historical perspective of the history of the Free Speech and Free Press clauses in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 131 L.Ed.2d 426, 115 S.Ct. 1511 (1995). Mr. Justice Thomas therein stated:

> The understanding described above, however, when viewed in light of the Framers' universal practice of publishing anonymous articles and pamphlets, indicates that the Framers shared the belief that such activity was firmly part of the freedom of the press. It is only an innovation of modern times that has permitted the regulation of anonymous speech.

As Mr. Justice Thomas further notes, the use of anonymous writing included advocacy of the ratification of the Constitution itself.

The Ordinance has stripped the Jehovah's Witnesses of their right to practice their religion anonymously. The Ordinance has imposed restrictions on their guaranteed right of Free Speech and Free Press as well as the exercise of their religion. The following seems to hold true in this instance:

> "The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.[3] This freedom embraces the right to distribute literature." *Martin v. City of Struthers*, 319 U.S. 141, 143 (quoting *Lovell v. Griffin*, 303 U.S. 444, 452).

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[3] "The only security of all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, Writings of Thomas Jefferson, Washington ed. v. 7, p. 325.

In the Opinion delivered by Mr. Justice Black:

> "For centuries it has been the common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistent with the federal Constitution's guarantee of free speech and press, possess this power". (quoting from Mr. Justice Black's Opinion, *Martin v. City of Struthers*, 319 U.S. 141, 142).

In Ohio, the "individual master of each household" has the right to determine what political, religious or social representatives may or may not step upon his property. He has the right to post a "No Trespassing" sign on this property warning that they are uninvited and may be prosecuted to the full extent of the law. There is no need in the Village of Stratton to enact and enforce such an ordinance inconsistent with protected constitutional rights.

The City of Struthers ordinance did not safeguard the constitutional rights of Free Speech and Free Press. For the same reasons, this Ordinance should not stand.

This *Amicus Curiae* argues that the Ordinance is unconstitutionally overbroad because of the prohibitions

established regarding the door-to-door engagement of Free Speech. Although the Ordinance was enacted allegedly to protect its citizens from potential acts of fraud, with its intentions being arguably pure, the Ordinance is nonetheless overbroad in that it restricts constitutionally protected rights. "A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct", *Grayned v. City of Rockford*, 408 U.S. 104 (1972). This Ordinance not only prohibits the Jehovah's Witnesses from evangelizing door-to-door without a permit, it would appear that it also prohibits or could prohibit the Girl Scouts of America from selling cookies door-to-door, the Rotarians from soliciting members, or Baptists or other religious groups from practicing their religion anonymously, without first obtaining a permit.

Thomas Jefferson, the author of "The Virginia Act for Religious Freedom", summed up the fervor of the Founding Fathers with respect to religious freedom wherein the Act provided as follows:

> "SECT. II. We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

In *Village of Schaumburg v. Citizens For a Better Environment*, 444 U.S. 620, 63 L.Ed.2d 73 (1980), Mr. Justice Rehnquist stated:

> " . . . Such activity (house-to-house canvassing) may be worthy of heightened protection when limited to the dissemination of information, or when designed to propagate religious beliefs . . . " See, *e.g., Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1943).

CONCLUSION

The United States Constitution does not sanction a community to encroach guaranteed freedoms in order to establish itself as an enclave free from contact with a religious minority. As Mr. Justice Marshall stated in *Grayned v. City of Rockford*, 408 U.S. 104, 33 L.Ed.2d 222 (1972):

> "We made clear that 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' " *Id.*, at 89 S.Ct., at 737, citing *Hague v. CIO*, 307 U.S. at 516, 59 S.Ct. at 964.

President Thomas Jefferson once advised his old friend, George Wythe, using the now famous message:

> "Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people." Jefferson's Letter To Wythe, August 13, 1786. See *Jefferson and the Rights of Man*, Dumas Malone, at Page 155.

The Independent Baptist Churches of America respectfully support the position espoused by the Appellants in this case.

Respectfully submitted,

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Exhibit "A"

Baptist Temple of Franklin – Franklin, Pennsylvania

Beacon of Truth Ministries – Sumter, South Carolina

Beeville Baptist Church – Beeville, Texas

Bethel Baptist Church – Jackson, Tennessee

Bible Baptist Church – Mercer, Pennsylvania

Center Road Baptist Church – West Seneca, New York

Countryside Baptist Church – Punxsutawney, Pennsylvania

Cross & Crown Baptist Church – Grant, Michigan

Faith Baptist Church – Seneca, Pennsylvania

Forest Area Baptist Church – Marienville, Pennsylvania

Frederick Baptist Temple – Frederick, Maryland

Freedom Baptist Church – Auburn, New York

Harvest Baptist Church – Acworth, Georgia

Heritage Baptist Church – Lawrence, Kansas

Independent Baptist Church of Kingwood – Kingwood, West Virginia

Independent Bible Baptist Church – Montoursville, Pennsylvania

Liberty Baptist Church – Rapid City, South Dakota

Madison Baptist Church – Madison, Alabama

Maranatha Baptist Church – Lyons, New York

Mayfield Baptist Church – Beaver Falls, Pennsylvania

Mountain Lake Baptist Church – Oakland, Maryland

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New England Baptist Church – Medford, Maine

Old Paths Baptist Church – Jefferson City, Missouri

Pioneer Valley Baptist Church – Westfield, Massachusetts

Points North Baptist Mission – New Philadelphia, Ohio

Temple Baptist Church – Baldwinville, New York

Victory Baptist Church – Pine Bluff, Arizona

West Coast Baptist Church – Vista, California